

PARLIAMENT OF ZIMBABWE

FORM OF PETITION

**TO THE HONOURABLE SPEAKER AND MEMBERS OF PARLIAMENT, IN
PARLIAMENT ASSEMBLED**

FIRST SESSION – NINETH PARLIAMENT

PRESENTED TO PARLIAMENT ON 3 DECEMBER 2018

The Petition of the Undersigned:

Zimbabwe Election Support Network (ZESN) of 10 Rochester Crescent Belgravia, Harare, whose network institutional members are the following:

- i. Association of Women's Clubs (AWC)
- ii. Catholic Commission for Justice and Peace Zimbabwe (CCJPZ)
- iii. Civic Education Network Trust (CIVNET)
- iv. Combined Harare Residents Association (CHRA)
- v. Counselling Services Unit (CSU)
- vi. Chitungwiza and Manyame Rural Residents Association (CAMERRA)
- vii. Evangelical Fellowships of Zimbabwe (EFZ)
- viii. Gender and Media Connect (GMC)
- ix. Habakkuk Trust
- x. Legal Resources Foundation (LRF)
- xi. Media Institute of Southern Africa (MISA)
- xii. Media Monitors (MM)
- xiii. National Association of Societies for the Care of the Handicapped (NASCOH)
- xiv. Organisation for Rural Association for Progress (ORAP)
- xv. The Women's Coalition of Zimbabwe (WCOZ)
- xvi. Progressive Teachers Union of Zimbabwe (PTUZ)
- xvii. Radio Dialogue
- xviii. Rooftop Promotions
- xix. Transparency International Zimbabwe (TIZ)
- xx. Women's Action Group (WAG)
- xxi. Women's Trust
- xxii. Youth Empowerment and Transformation Trust (YETT)
- xxiii. Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO)
- xxiv. Zimbabwe Civic Education Trust (ZIMCET)
- xxv. Zimbabwe Congress of Trade Unions (ZCTU)
- xxvi. Zimbabwe Council of Churches (ZCC)
- xxviii. Zimbabwe Human Rights Association (ZimRights)
- xxix. Zimbabwe Lawyers for Human Rights (ZLHR)
- xxx. Zimbabwe National Students Union (ZINASU)
- xxxi. Zimbabwe Students Christian Movement (SCM.Z)
- xxxii. Zimbabwe Union of Journalists (ZUJ)
- xxxiii. Zimbabwe Peace Project (ZPP)
- xxxiv. Zimbabwe Woman Lawyers Association (ZWLA)

And whose members of the board are:

- i. Mr. Andrew Makoni (Board Chairperson)
- ii. Mr. Dumisani Nkomo
- iii. Mr. Jacob Mukamba (Treasurer)
- iv. Mr. Lovemore Rambiyawo
- v. Mr. Okay Machisa
- vi. Ms. Sally Dura
- vii. Mr. Marvellous Khumalo
- viii. Ms. Rosewita Katsande
- ix. Rev. Kenneth Mtata
- x. Mr. Samuel Gwezi
- xi. Ms. Abigail Matsvayi
- xii. Pastor Blessing Makwara

And whose contact person is Mrs Rindai Chipfunde-Vava, the National Director, of ZESN head office, 10 Rochester Crescent, Belgravia, Harare, Contact Telephone: +263 242 791443/ 798193/250735.

ZESN, having consulted its partners in civil society, is supported in this petition by the following civil society organisations:

Veritas ; Ibetshu Likazulu ; Abamelli Lawyers for Human Rights; National Association of Non-Governmental Organisations; Election Situation Room; Women in Politics Support Unit; Human Rights NGO Forum; Center for Peace Initiatives in Africa; National Association of Youth Organisations.

Respectfully shows That Your Petitioners:

Being citizens of Zimbabwe;

And whose funding method is donor funding from various development partners;

AWARE that the Parliament of Zimbabwe is enjoined protect the Constitution and promote democratic governance in Zimbabwe, and in this regard to enact relevant laws for the peace, order and good governance of Zimbabwe;

COGNISANT of the transition that took place in Zimbabwe in November 2017, which sought to break Zimbabwe from its past of autocracy, and usher in democratic reform;

CONCERNED at the slow pace of legal reform addressing the democratic deficit since the promulgation of the new Constitution in May 2013;

ALARMED by the administrative lethargy in the Executive arm of the State to address the misalignment of some statutes relevant to electoral processes to the Constitution;

DESIROUS of seeing electoral law reform that ensures that Zimbabwe embraces and implements its state party obligations under the African Union and the Southern African Development Community in the crafting of a legal framework capable of the discharge of a democratic electoral process, and in particular its commitments under the African Charter on Democracy, Elections and Governance and the SADC Principles and Guidelines for Democratic Elections as revised, respectively;

NOW THEREFORE the petitioners beseech the Parliament of Zimbabwe to consider and pass the relevant legislation that give life to tenets of the 2013 Constitution, and implore the Executive to uphold the Constitution by ensuring that Zimbabwe's Electoral Law is reviewed in compliance not only with the Executive's national and international undertakings and obligations, but also with the provisions of the Constitution and Zimbabwe's international obligations as a member of the international community of nations.

Background

Zimbabwe has an unfortunate history of contested electoral outcomes. This is because of a legal framework that does not embrace principles for the discharge of democratic elections.

As more fully appears in the annexure to this petition, your petitioners appeal set up an all-inclusive electoral reform committee to deliberate on political, administrative and other legal reforms that are needed to enhance the credibility of Zimbabwe's electoral processes.

In particular, your petitioners seek this this House to take into account the following issues for the democratic overhaul of Zimbabwe's Electoral Law and electoral processes:

1. Enhancing the Independence of the Zimbabwe Electoral Commission (ZEC), and other independent commissions connected to the electoral cycle;
2. Enhancing the participation of women, the youth and persons with disability in the electoral process, as voters and candidates;
3. Reviewing the legal provisions around voter registration and the voters' roll;
4. Reviewing the provisions around the delimitation of constituencies;
5. Reviewing the provisions on political party regulation;

6. Tightening the provisions on the role of traditional leaders vis-à-vis the electoral process;
7. Addressing deficiencies with respect to voter education provisions;
8. Tightening provisions on results management to enhance transparency and reduce suspicion and results contestation;
9. Streamlining the election dispute mechanisms;
10. Reviewing the provisions regulating the media reportage of electoral processes;
11. Enhancing electoral administration through clearer legal provisions and electoral practice; and
12. Domesticating regional and international instruments to which Zimbabwe is party;

Fuller details are annexed hereto (Annexure A).

Petitioners' Plea and Prayer:

Your petitioners ask that Parliament, in light of its legislative and oversight roles:

- a. Must undertake and insist on an urgent review of the Electoral Law, not only in keeping with the dictates of the Constitution of Zimbabwe, but also in line with Zimbabwe's obligations as an esteemed member of the African Union and the Southern African Development Community. This also resonates with the undertakings by Government as far back as April 2014 to bring a comprehensive electoral amendment Bill, an undertaking that remains outstanding. In this respect, your petitioners seek that this House adopts a multi-stakeholder approach in mapping the way forward; and
- b. Review the administrative processes for elections, to enhance them, as suggested by your petitioners herein.

WHEREFORE your petitioners pray that your Honourable House will be pleased to take their case into favourable consideration, and grant such relief as prayed for, or as it may deem fit.

AND your petitioners, as in duty bound, will ever pray.

Dated at Harare, this ... day of December, 2018

Annexure A to the Petition

The petitioners appeal to the House to take into account the detail below as it considers the issues raised in relation to the electoral legal framework.

1. The Legal Framework:

Your petitioners implore the authorities to review the relevant statutes with a view to bringing them in line with the spirit of the Constitution. In particular, they bring the following issues for attention:

- a. The independence of the Zimbabwe Electoral Commission (ZEC) is provided for under Section 235 of the Constitution. Provisions of the Electoral Law that offend this principle must be reviewed. These include sections 192(6) and (12) of the Electoral Act, which permit Executive interference with the Commission.
- b. Pursuant to its signature of the African Charter on Democracy, Elections and Governance in February 2018, Zimbabwe must proceed to give life to the Charter through its domestication and implementation.

2. The Political Environment:

The political environment is reinforced by a legal framework that is the legacy of our past. Such statutes as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA), do not augur well for a country that seeks to re-engage the international community. Further, legislation relating to the public media is designed to skew the media environment, and needs urgent review.

Parliament must legislate for an enforceable electoral Code of Conduct for traditional leaders to ensure that they play no role that offends fundamental rights of citizens as regards the electoral process.

The Electoral Law must incorporate a Code of Conduct for public servants and public officers, in relation to elections, and provide for the enforcement of political neutrality as provided for by the Constitution.

The Electoral Law also needs to explicitly state what constitutes the practice of vote buying and related actions.

3. Voter Registration and the Voters' Roll:

The electoral law must compel ZEC to inform registrants who are removed from the voters' roll. Those put on the exclusion list must be notified, and there must be a less cumbersome process for redress

Access to the final voters' roll must be guaranteed for all contestants as provided by law, and within a specific time-frame. The Zimbabwe Electoral Commission must not arrogate unto itself discretion that is not provided for by law vis-à-vis access to the roll.

Your petitioners seek a legal framework that facilitates ease of registration in urban areas in view of the lowest registration statistics in Harare and Bulawayo in particular, and in urban areas in general. There should be more permanent registration centres established and these should be open throughout the electoral cycle.

Copies of the roll must be availed to party agents at polling stations. ZEC must invest in the procurement of integrated systems that allow one gadget to be used for multiple purposes, such as enrolling voters, voter verification on Election Day and transmission of results.

The law must provide for the publication of the de-duplication process to enhance transparency. ZEC must focus on continuous voter registration and cleaning of the voters' roll.

4. The Provision of Voter Education:

Voter education should be linked to the secrecy of the ballot and other misinformation by electoral stakeholders.

Voter education is required and expected throughout the electoral cycle. Zimbabweans have been accustomed to provision of voter education on an episodic approach by the Zimbabwe Electoral Commission. The high number of spoilt votes in previous elections calls for the provision of more voter education throughout the electoral cycle. It should reach institutions of higher learning and secondary schools, and target first-time voters. It should also deliberately emphasise the importance of other elections, apart from presidential elections.

Your petitioners submit that the Electoral Law must provide for continuous voter education by a broad range of actors that include the Commission and Civic Society Organisations (CSOs). The voter education and the materials must be accessible to people with disabilities including those visually impaired.

5. The Right to Vote and Inclusivity:

The Constitution grants every Zimbabwean the right to vote. This the Electoral Law does not give life to, as it excludes millions in the Diaspora, prison and hospital. In keeping with the thrust of the new dispensation to include citizens in the Diaspora in national development, the selective inclusion of Zimbabweans in the Diaspora and those in places of confinement and hospitals must be reviewed. This also includes citizens hospital staff, nurses and doctors who will be on duty on Election Day. The expansion of special voting must be considered to cater for these groups.

6. Election Observation:

In the light of the independence of the Zimbabwe Electoral Commission as provided for not only under the Constitution, but also under the Electoral Law, the structure of the Observer Accreditation Committee must be reviewed in keeping with the principle of the independence of the Commission.

7. Delimitation of Constituencies:

Zimbabwe has conducted three sets of elections on the basis of one set of delimitation: 2008, 2013 and 2018 elections. As the year for the next set of harmonised elections is known, there is no reason why delimitation for the 2023 elections cannot be timeously conducted. A national census was conducted in 2012 which may properly guide the delimitation. There is need to rationalise constituencies that are too big and those that are too small. Clear regulations for delimitation must be put in place.

8. Election Administration:

There is need to mitigate conflict and suspicions around the ballot paper by ensuring transparency in ballot paper designing and printing through engagement of electoral stakeholders. It is also critical that the implementation of postal voting abides by the principles of free choice and secrecy of the vote contained in the Constitution and the Electoral Law. Special voting, amenable to transparent electoral principles and observation must be reinstated to guarantee the right to vote to those unable to vote on Election Day.

The electoral observer process must be made easier by removing accreditation fees and the requirement for physical presence. This is the international best practice.

Polling stations added in the run-up to elections must be widely publicised to ensure they are known to relevant stakeholders, and to reduce suspicions.

Election administration must conform to open data principles. ZEC must adopt an effective communications strategy to ensure that it gets the confidence of its stakeholders.

ZEC must publish audit reports on expenditure on elections administration.

9. Political Parties:

These must be compelled by law to comprehensively deploy polling agents to observe key electoral processes. There is also need to regulate political parties. The legal framework must provide for the disclosure and audits of parties' sources of funding, and the use of campaign funding.

Multi-party Liaison Committees must be made permanent features of the electoral cycle.

10. Women:

Appropriate provisions must be made that make it mandatory for political parties to observe quotas for women. There must be gender parity, backed by law, in all decision-making positions and institutions.

11. Youth:

The legal framework must provide for youth participation as voters, candidates and as decision-makers.

12. Persons with Disability:

ZEC must ensure mechanisms are put in place to facilitate voting by people with disabilities that guarantee the secrecy of the vote. Polling stations must be accessible to persons with disability.

13. Election Day and Results Management:

The legal framework must be reviewed to ensure a more transparent results transmission system where presidential results from each polling station are transmitted directly to the national results collation centre. Any changes to the results should be made in the presence of observers and political party agents. ZEC should consider the total valid votes cast rather than the total votes cast in the counting of election votes and avoid errors that may necessitate the revision of announced results. Further, ZEC must invest in a real time results transmission system. ZEC must pursue an open data policy that includes the prompt display of election result forms at polling stations for each polling station, disaggregated by demographic variables and post those forms on its website.

14. Election Dispute Resolution:

The legal framework must put in place other dispute resolution mechanisms to ensure the peaceful resolution of election-related disputes throughout the electoral cycle, including dealing with cases of post-election retribution. Independent commissions should be strengthened, especially the National Peace and Reconciliation Commission (NPRC) and the Zimbabwe Human Rights Commission (ZHRC) to effectively execute their respective roles in electoral matters. The electoral law must reflect these principles. Electoral petitions must be time-framed in the Electoral Law. The judiciary must be compelled to avail full judgments within a specified period.

15. Media and Elections:

Enforceable legal provisions on the regulation of the media reportage of elections must be enacted, and implemented, particularly with the state media. The legal framework must transform the Zimbabwe Broadcasting Authority must be transformed into a truly independent institution that effectively and partially regulates public, private and community broadcasters. ZEC media monitoring must be timely and effective. It must put in place effective mechanisms to ensure compliance. The ZEC media monitoring report must be shared widely. There must be mechanisms against hate speech and fake news on social media throughout the electoral cycle. The legal framework must also embrace media diversity and inclusion.